

NOT FOR PUBLICATION

CLOSED

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

KELLY PIERRECIUS,

Petitioner,

v.

DEPARTMENT OF HOMELAND
SECURITY,

Respondent.

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Hon. Faith S. Hochberg

Civil No. 14-0709 (FSH)

**MEMORANDUM OPINION
AND ORDER**

Date: March 26, 2014

HOCHBERG, District Judge:

This matter having come before the Court upon *pro se* Petitioner's filing of a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 and Petitioner having paid the \$5 filing fee; and

It appearing that the matter was previously dismissed for failure to name the warden, an indispensable party, as a respondent; and

It appearing that Petitioner has now filed an amended petition naming the warden as respondent; and

It appearing that although Petitioner indicates that this case concerns immigration proceedings, he has not provided the Court with the facts necessary to assess his challenge to ongoing detention awaiting removal from the United States under 28 U.S.C. § 2241; and

It appearing that Petitioner raises, as the sole ground of his petition, claims related to alleged cruel and unusual punishment in violation of the 8th Amendment of the United States Constitution and such claims appear to be more properly brought under 42 U.S.C. § 1983; and

The Court will allow Petitioner leave to amend this pleading and also to file a 42 U.S.C. § 1983 Complaint in which he may bring his claims related to medical care; therefore

IT IS on this 26th day of March, 2014, hereby

ORDERED that the Petition for Writ of Habeas Corpus shall be **DISMISSED** without prejudice; and it is further

ORDERED that if Petitioner wishes to proceed with this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241 as a challenge to his ongoing detention related to removal proceedings, Petitioner shall, within thirty days of the date of entry of this order, file an amended petition providing appropriate grounds for relief related to such a claim; and it is further

ORDERED that the Clerk of the Court shall commence a new and separate matter for Petitioner under 42 U.S.C. § 1983 designating “KELLY PIERRECIUS” as “Plaintiff” and “ROY L. HENDRICKS” as “Defendant,” “Cause” as “42:1983 Prisoner Civil Rights” and “Nature of Suit” as “550 Prisoner: Civil Rights” and shall assign that new matter to the undersigned; and it is further

ORDERED that the Clerk of the Court shall docket this Memorandum Opinion and Order, along with a copy of Petitioner’s Amended Petition (Dkt. No. 5), in the new matter; and it is further

ORDERED that the Clerk of the Court shall terminated that new matter by making a new and separate entry on the docket of that matter reading “CIVIL CASE ADMINISTRATIVELY TERMINATED”; and it is further

ORDERED that Petitioner may reopen that new matter by, within thirty days from the date of entry of this Order, (1) either paying the appropriate fees or providing a completed application to proceed *in forma pauperis* and (2) filing an amending pleading setting forth his grounds for relief under 42 U.S.C. § 1983; and it is further

ORDERED that the Clerk of the Court serve this Memorandum Opinion and Order upon Petitioner by regular U.S. mail, together with a blank form to be used in the filing of a 28 U.S.C. § 2241 petition, a blank form to be used in the filing of a 42 U.S.C. § 1983 complaint, a blank form application to proceed *in forma pauperis*, and enclose in the mailing a copy of the docket sheet generated in the new matter which was opened for Petitioner; and it is further

ORDERED that the Clerk of the Court shall close the file in this matter.

s/ Faith S. Hochberg
Hon. Faith S. Hochberg, U.S.D.J.